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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,891	07/15/2003	Vincent De Laforcade	NONY 3.0-004	7321
530	7590	02/22/2006	EXAMINER	
LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			DOAN, ROBYN KIEU	
			ART UNIT	PAPER NUMBER
			3732	

DATE MAILED: 02/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/619,891	DE LAFORCADE, VINCENT	
	Examiner	Art Unit	
	Robyn Doan	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 48-96 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 48-96 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/15/03</u> . | 6) <input checked="" type="checkbox"/> Other: <u>Attachments A, B, C.</u> |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 95 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 95 is indefinite because it depends on canceled claim 47. For the examination purpose, claim 95 will be treated as depending to claim 48.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 48-51, 55-60, 62-64, 69, 75-77, 79-85, 88, 95 are rejected under 35 U.S.C. 102(b) as being anticipated by Hollenberg et al (U.S. Pat. # 4,881,558).

With regard to claim 48 and 95, Hollenberg et al discloses a cosmetic receptacle (fig. 1) comprising a body (2) containing a cosmetic (col. 6, lines 23-25), a neck (1) with

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an opening (fig. 1) attaching to the body, the neck having a first portion (at 19) having a first diameter and a first fixing means (19), the neck also having a second portion (at 12) located between the body and the first portion, the second portion having a second diameter greater than the first diameter (fig. 1) and a second fixing means (12). In regard to claim 49-50, 57 and 88, Hollenberg discloses the neck having a shoulder and an inside shoulder (see attachment A) which includes a plane annular surface extending outside the neck and being perpendicular to the neck (see attachment A). In regard to claim 51, Hollenberg et al shows at least one of the first and second portions of the neck having a thread (12, col. 4, lines 40-44). In regard to claims 55-56, Hollenberg et al discloses a receptacle having a plastic material (col. 6, lines 34-35) and the first portion having a first inside diameter and the second portion having a second inside diameter greater than the first inside diameter, see fig. 1. In regard to claims 58-59, Hollenberg et al discloses a kit comprising at least one accessory (3) configured for removably fixing onto the neck and wherein the accessory cooperating with the second portion (12) of the neck (fig. 3). In regard to claims 60 and 62, Hollenberg discloses the shoulder (attachment A) connecting the first and second portions, the accessory having an assembly skirt (see attachment A) which cooperates with the second portion, the skirt having a sealing surface (inner surface of 10, fig. 1) that abuts the shoulder when fixed to the neck; the accessory does not include a sealing lip that abuts an of the neck. In regard to claims 63-64, Hollenberg et al discloses the accessory including an applicator (3) with teeth (7). In regard to claim 69, Hollenberg et al shows the applicator having at least one row of teeth (fig. 1) which includes a pair of end teeth (7) and the end teeth

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having no dispenser orifices. In regard to claims 75-76, Hollenberg et al also shows the teeth being of substantially the same length, see fig. 3; in regard to the limitations "said applicator is made by molding" of claim 76, applicant is noted that Hollenberg et al has shown an applicator as discussed above, how it being made is given no patentable weight in an article claim. In regard to claim 77, Hollenberg et al further shows at least one of the first and second fixing means including a thread (12) and the at least one accessory adapted for screwing onto the thread (fig. 3). In regard to claims 79-83, Hollenberg et al discloses at least two accessories (3, 4) which include a cap (4) and an applicator (3), wherein one (3) of the accessories cooperates with the first portion (fig. 3) and other (4) of the accessories adapted for cooperating the second portion of the neck. In regard to claims 84-85, Hollenberg et al discloses the cosmetic having a substance for coloring the hair (col. 6, lines 23-25).

Claims 48, 53, 54, 58, 59, 78, 90-94 and 96 are rejected under 35 U.S.C. 102(b) as being anticipated by Ogasawara (U. S. Pat. # 4,341,319).

With regard to claims 48 and 96, Ogasawara discloses a cosmetic receptacle (fig. 1) comprising a body (1) containing a cosmetic (col. 2, lines 34-36), a neck (2) attaching to the body, the neck having a first portion (at 8) having a first diameter and a first fixing means (8), the neck also having a second portion (see attachment B) located between the body and the first portion, the second portion having a second diameter greater than the first diameter, see fig. 1 and a second fixing means (threaded portion, fig. 1). In regard to claims 58, 59, 91, 93, Ogasawara discloses a kit (fig. 1) comprising a

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cosmetic receptacle as discussed above in claim 48. The kit also having at least two accessories (4, 5) cooperating with the first and second portions of the neck, see fig. 1. In regard to claims 92, 94, Ogasawara shows the at least two accessories being selected from the group consisting of a cap (col. 2, lines 37-38). In regard to claims 53, 78 and 90, Ogasawara further discloses the first fixing means comprising a snap-fastening means (col. 2, lines 47-52) and the second fixing means comprising a thread (fig. 1) (claims 53 and 90); Ogasawara also discloses another accessory (4) arranged with at least one complementary snap-fastening means (7) suitable for cooperating with the at least one snap-fastening means (8) (claim 78). In regard to claim 54, Ogasawara also shows the snap-fastening means including an annular bead (annular flange 8).

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 89 is rejected under 35 U.S.C. 102(e) as being anticipated by Robbins (U.S. Pat. # 6,523,720).

With regard to claim 89, Robbins discloses a receptacle (fig. 2) comprising a body (30) and a neck (42) providing an opening (32) into the body, the neck having a first portion (at 44) having a first diameter and having a first thread (44), a second portion (at 38) having a second diameter greater than the first diameter, see fig. 2; the second portion also having a second thread (38), said first and second threads inherently enabling screw fastening in the same direction.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ogasawara in view of Robbins.

With regard to claim 52, Ogasawara discloses all the claimed limitations in claims 48 and 51 as discussed above except for both fixing means including threads and enabling screw fastening by turning in the same direction. Robbins discloses a receptacle (fig. 2) comprising a body (30) and a neck (42) providing an opening (32) into the body; Robbins also shows the neck having first and second portions with threads (38, 44, fig. 2). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct both fixing means including threads as taught by Robbins into the receptacle of Ogasawara as a known alternative way to seal the device. And it would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the threads such that enabling screw fastening by turning in the same direction, since such modification would involve a mere design choice of the known component to obtain the desired results.

Claim 61 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hollenberg et al in view of Dornbusch et al (U.S. Pat. # 5,326,185).

With regard to claim 61, Hollenberg et al discloses a kit comprising all the claimed limitations in claims 58 and 60 as discussed above except for the sealing surface having an annular bead. Dornbusch et al discloses a cosmetic container (fig. 5) comprising a receptacle (110) having an annular bead (119) along a perimeter of the top portion (112); Dornbusch et al also discloses a cap (150) having an annular indentation (159) to snap fit over the annular bead. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the annular bead as taught by Dornbusch et al into the sealing surface of Hollenberg's device as a known alternative way to better secure the cap to the device.

Claims 65-68, 70-72 and 74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hollenberg et al in view of Elmer et al (U.S. Pat. # 6,457,476).

With regard to claims 65-68, Hollenberg et al discloses a kit comprising all the claimed limitations in claims 58, 63-64 as discussed above except for at least one of the teeth having at least one dispenser orifice being displaced from the free end of the one of said teeth, at least one dispenser orifice substantially limits a cosmetic to be dispensed from dispensing other than between the teeth. As to claims 70-72 and 74, Hollenberg et al also does not discloses at least one row of teeth having a pair of end teeth having orifices which faces others of the at least one row of teeth, at least one tooth located between the pair of end teeth having a plurality of orifices on the exterior

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of the one tooth, the plurality of orifices being located on opposite sides of the one tooth and the applicator having at least six teeth, each including an orifice. Elmer et al discloses an applicator (20, figs. 2, 7) comprising one row of at least six teeth (fig. 2), each tooth includes at least one orifice (62) being displaced from the free end of the tooth; Elmer et al also shows a pair of end teeth (fig. 2) having orifices (62, 68) which faces others of the at least one row of teeth (fig. 7), at least one tooth (50) located between the pair of end teeth having a plurality of orifices (62, 68, fig. 7) on the exterior of the one tooth, the plurality of orifices being located on opposite sides of the one tooth (fig. 7). Elmer et al inherently shows at least one dispenser orifice (62, 68) substantially limits a cosmetic to be dispensed from dispensing other than between the teeth. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the particular structures of the teeth as taught by Elmer et al as discussed above into the applicator of Hollenberg et al in order to effectively deliver the liquid to the hair of the user.

Claims 65 and 73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hollenberg et al in view of Kirschenbaum (U. S. Pat. # 2,270,529).

With regard to claims 65 and 73, Hollenberg et al discloses a kit comprising all the claimed limitations in claims 58, 63-64 as discussed above except for at least one of the teeth having at least one dispenser orifice being displaced from the free end of the one of said teeth and at least one tooth having a groove extending from a free end of the tooth to the at least one orifice. Kirschenbaum discloses a comb applicator (fig. 3)

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comprising at least one tooth (76) having at least one dispenser orifice (79) being displaced from the free end of the one of said teeth and at least one tooth having a groove (80) extending from a free end (78) of the tooth to the at least one orifice. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the particular structures of the teeth as taught by Kirschenbaum as discussed above into the applicator of Hollenberg et al in order to retard to rapid flow of the liquid down to the teeth.

Claims 86-87 are rejected under 35 U.S.C. 103(a) as being unpatentable over Joulia in view of Adams et al (U.S. Pat. # 5,513,763).

With regard to claims 86-87, Joulia discloses an applicator (1 it is noted that applicator 4 attached to capsule 7 which attaches to cap 1, therefore, it is proper to call 1 as an applicator) for removably affixing a neck of a receptacle, the applicator having an assembly skirt (see attachment C) having a free end, the applicator further having screw means (11). Julia does not disclose the skirt having an annular bead displaced from the free end of the applicator and on an inside surface of the assembly skirt. Adams et al discloses a receptacle (fig. 2) comprising a cap (21) having an assembly skirt (33) having a sealing surface which includes an annular bead (31). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to modify the assembly skirt of Joulia with the sealing surface including an annular bead as taught by Adams et al as a known way of solving the problem of sealing the neck portion of the receptacle (col. 3, lines 60-62). It would also have been

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obvious to one having an ordinary skill in the art at the time the invention was made to construct the location of the annular bead between the free end of the applicator and on an inside surface of the assembly skirt, since such a modification would have involved a mere change in the location of the known element.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hilgenberg is cited to show the state of the art with respect to a container having a neck with two different diameters. Filmore is cited to show the state of the art with respect to a cosmetic applicator having a receptacle including a neck with two different diameters.

The drawing filed 07/15/03 have been approved by the Examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

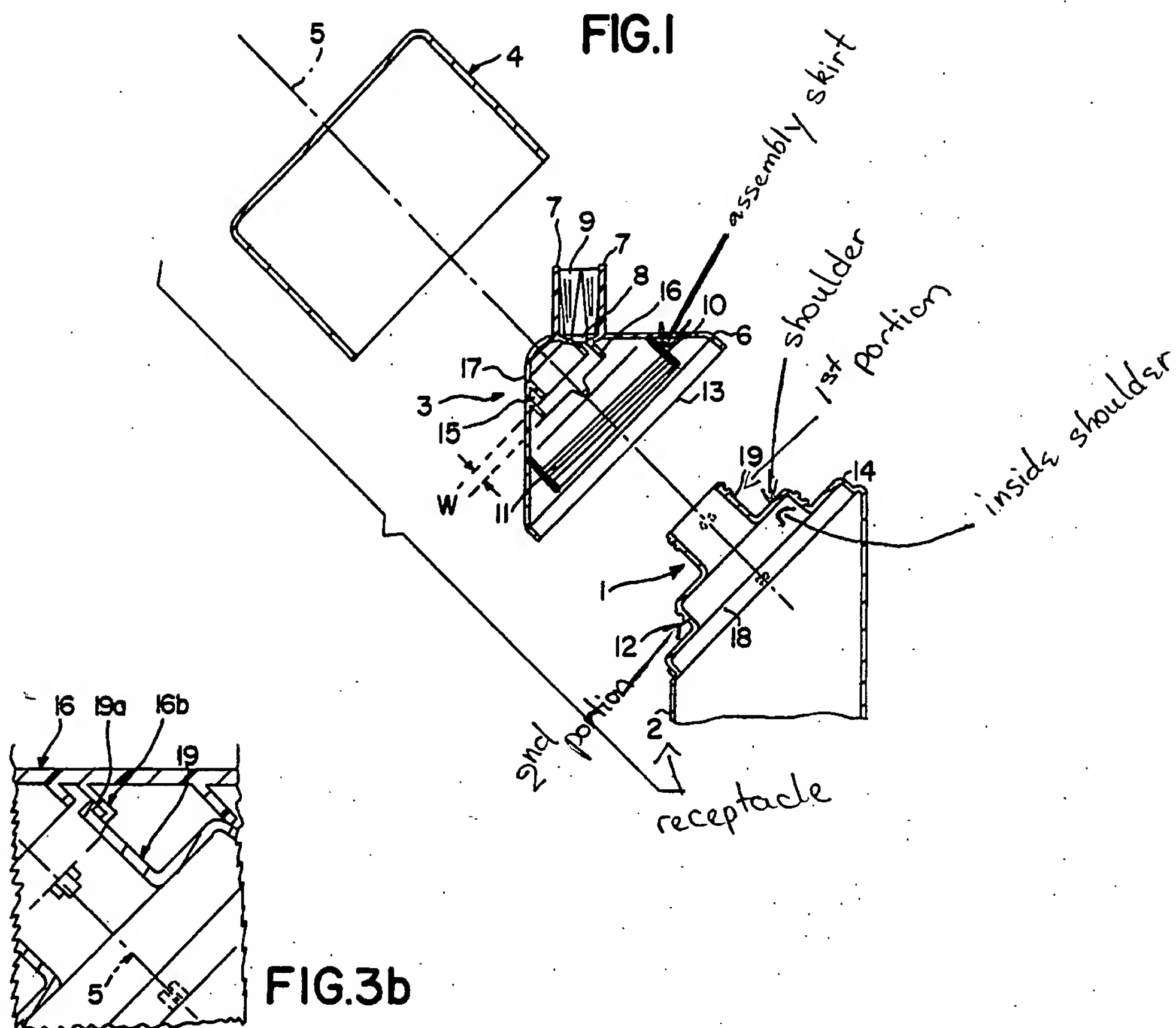
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Robyn', with a long, sweeping horizontal line extending to the right.

Robyn Doan
Examiner
Art Unit 3732

Attachment A



Attachment
B

U.S. Patent

Jul. 27, 1982

4,341,319

FIG. 1

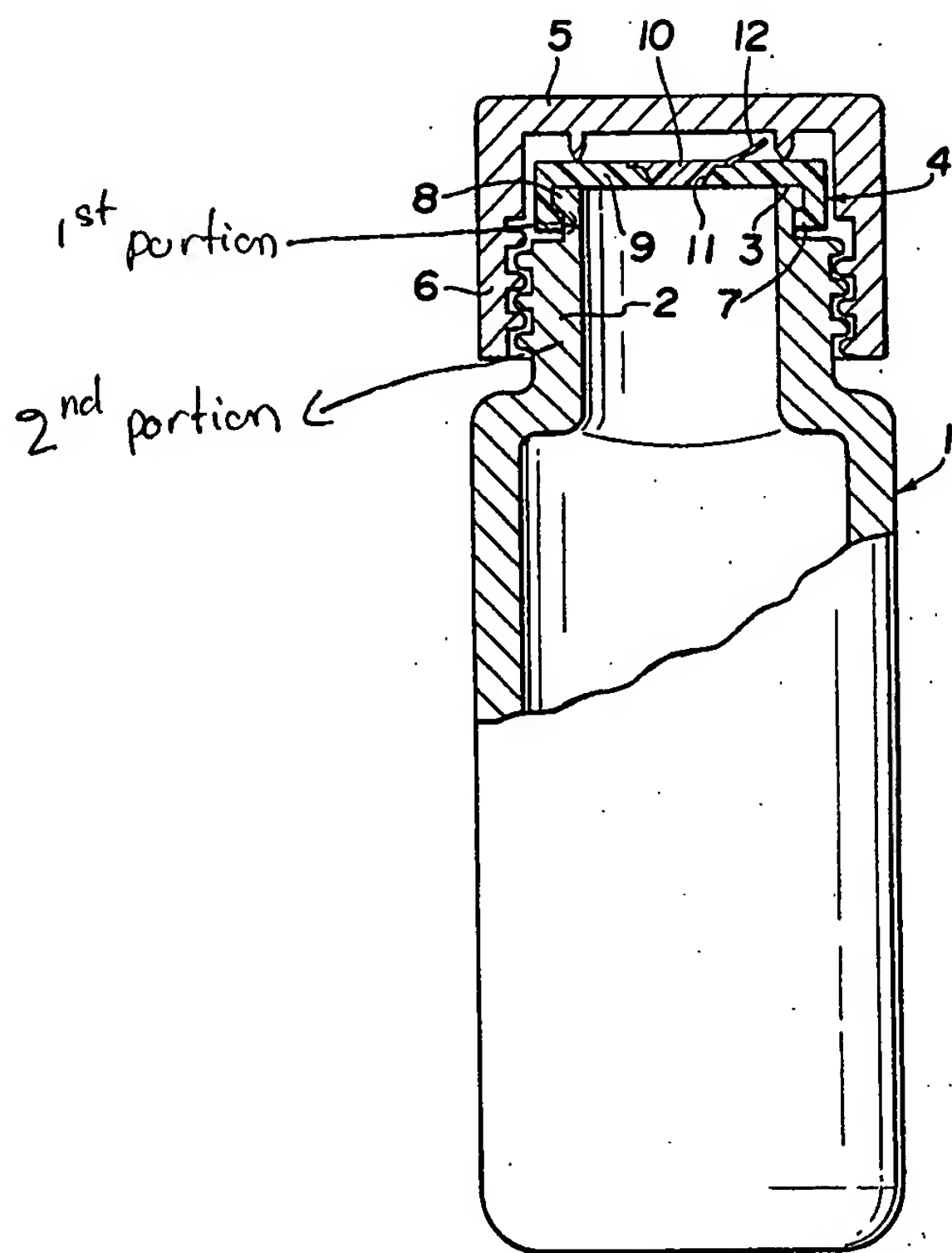


FIG. 2

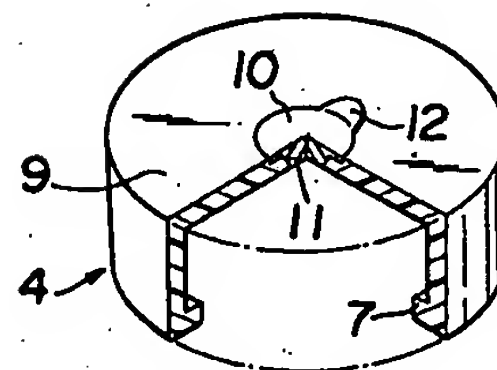


FIG. 3

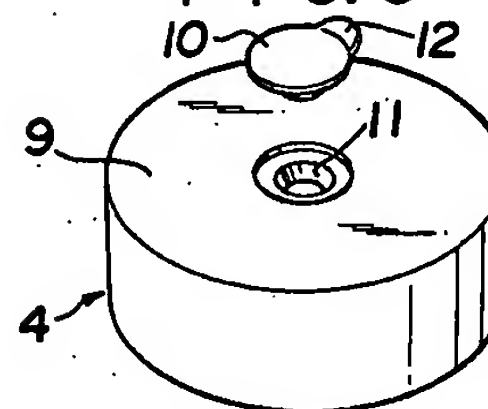


FIG. 4

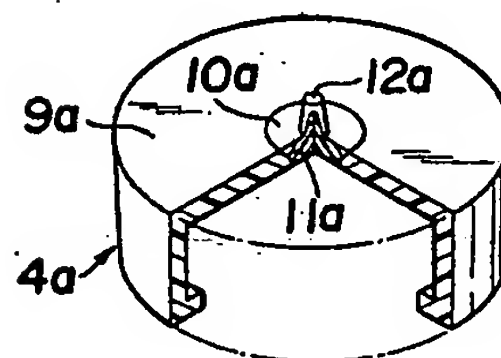
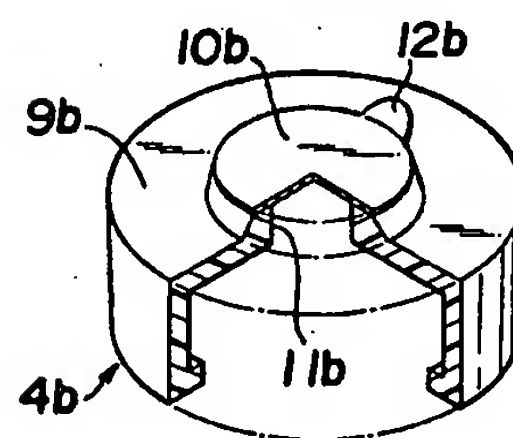


FIG. 5



Attachment

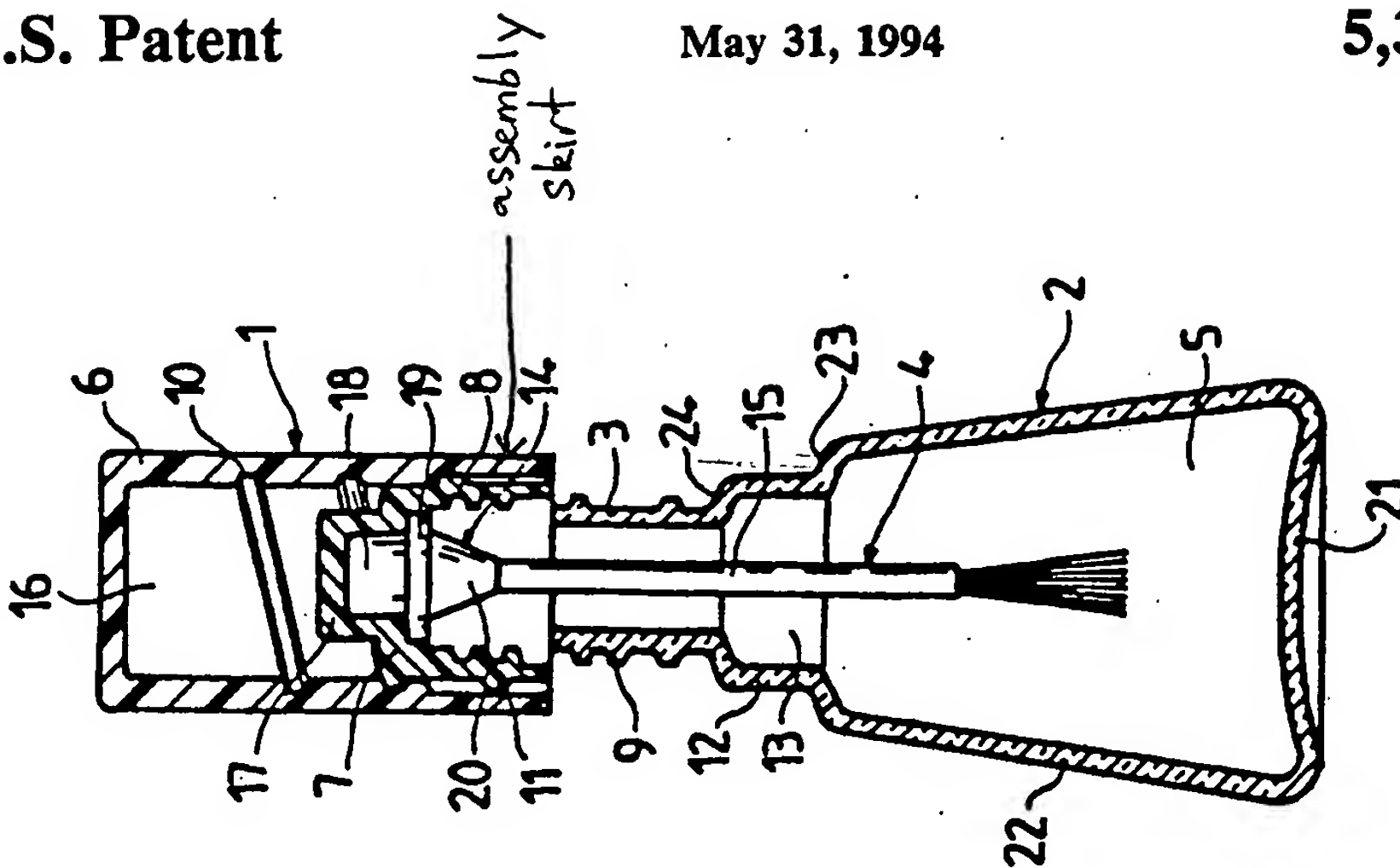


FIG. 1

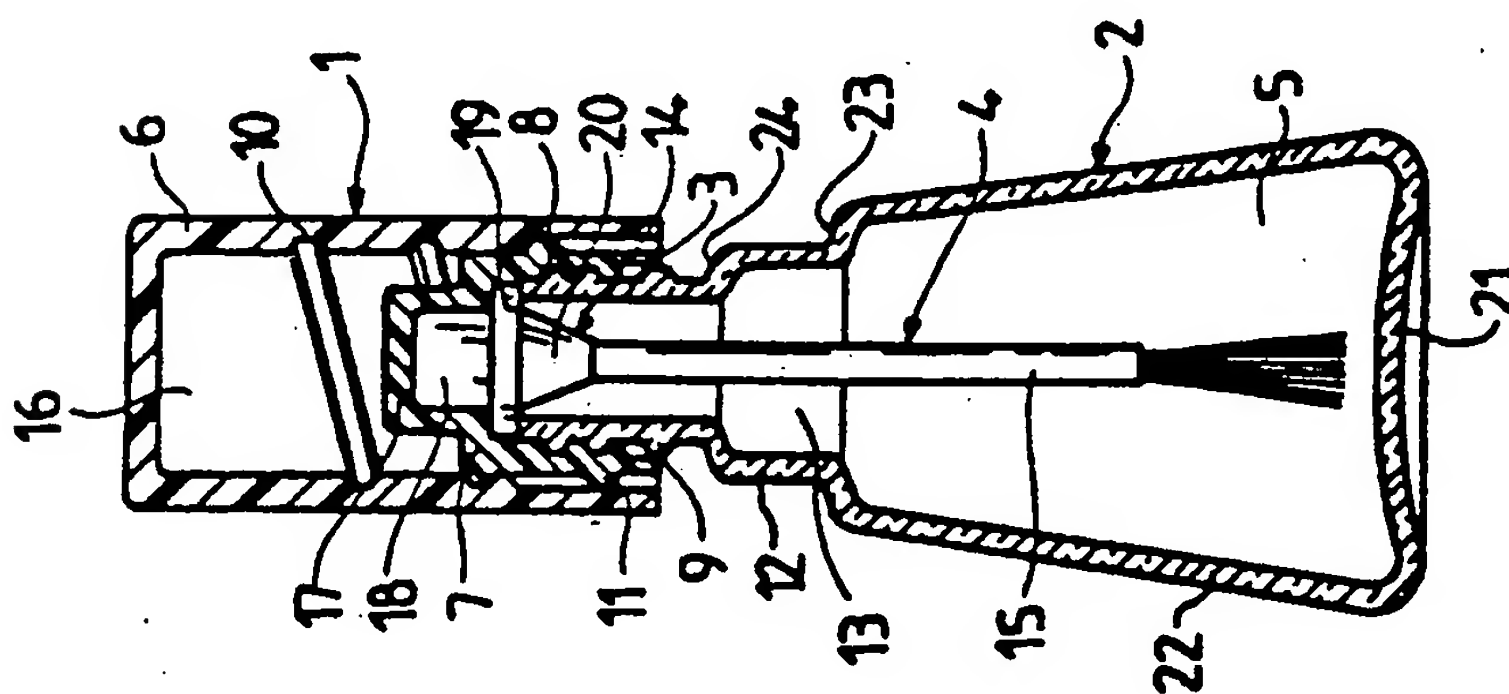


FIG. 2

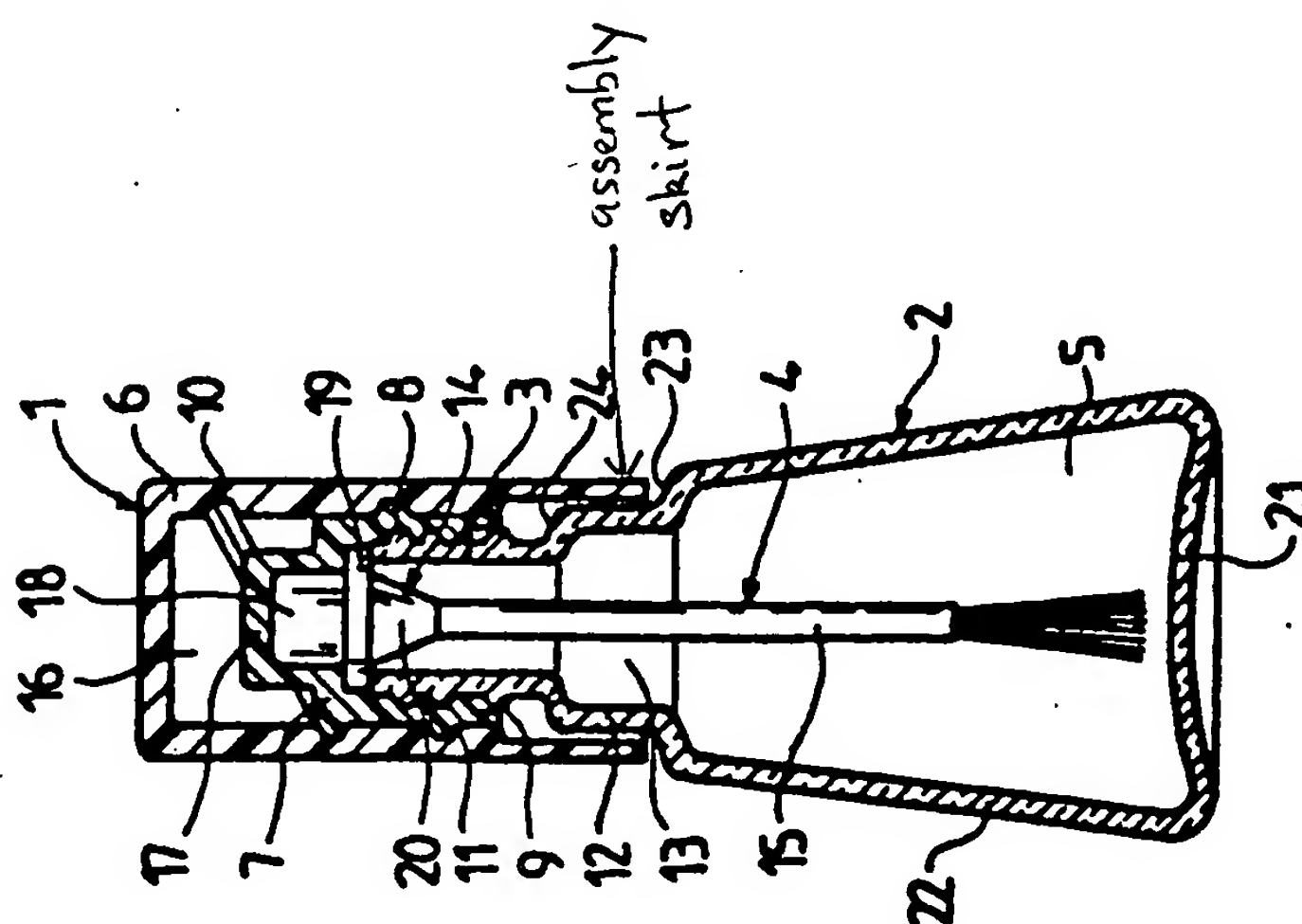


FIG. 3